112-293

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1116.

ALFRED SULLY, APPELLANT,

vs.

WILLIAM R. MANNING.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED ~~JULY~~ October 18, 1884.

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1 Pleas in the circuit court of the United States for the Southern district of Iowa, at a term thereof begun and holden at the United States court-house, in the city of Des Moines, in said district, on the second Tuesday in May, it being the thirteenth day of May, A. D. 1884, before the Honorable David J. Brewer, Honorable James M. Love, and Honorable O. P. Shiras, judges.

Attest: E. R. MASON, *Clerk.*

2 Be it remembered, that heretofore, to wit, on the 13th day of May, 1884, a transcript of record from the circuit court of the State of Iowa, in and for Jasper county, was filed in the clerk's office of the United States circuit court for the southern district of Iowa, central division, in a certain cause wherein William R. Manning was complainant and J. L. Mathews *et al.* were defendants, which said transcript is in the words and figures following, to wit:

3 *Petition in Equity.*

In the Circuit Court of Iowa, in and for Jasper County. April Term, A. D. 1883.

WILLIAM R. MANNING

v.

J. L. MATHEWS, W. B. RITTER, J. N. EDGE, Trustees of Newton Township, Jasper County, Iowa, D. G. Winchell, Treasurer of Jasper County, Iowa, The New Sharon Coal Valley & Eastern Railroad Company, The Chicago, Burlington & Pacific Railroad Co., and A. Sully.

STATE OF IOWA, *Jasper County,* } *ss:*

4 1. Your petitioner, William R. Manning, respectfully represents and shows to the court that he is now, and long before the happening of the several matters and things hereinafter stated was, a resident citizen and tax payer in Newton township, Jasper county, Iowa, and as such, with all the other tax payers in said township, is interested in the tax levy assessment and tax to be fully hereinafter set out and stated, and he brings this action not only in his own behalf, but of all the other tax payers in said township, who number several hundred and are too numerous to be all brought before the court, to the end that thereby a multiplicity of suits may be avoided and the questions and rights of your petitioner and all the other tax payers as aforesaid, as well as those of the several defendants hereinafter named, may be fully de-

5 termined and adjudicated.

II. Your petitioner further represents and shows that on or about the 25th day of April, A. D. 1881, the defendants, J. L. Mathews, W. B. Ritter, and J. N. Edge, who were then and are now the trustees of Newton township aforesaid, issued a notice calling a special election, to be held on the 9th day of May thereafter, to determine by vote of the electors of said township whether a three per

cent. tax upon all the taxable property of said township should be given in aid of the New Sharon Coal Valley and Eastern railroad, a copy of which notice is hereto attached, marked Exhibit "A," and made a part of this petition.

III. Your petitioner further represents and shows to the
6 court that said notice was based upon a certain paper purporting to be the petition of a majority of free-hold tax payers of said township, but your petitioner alleged that to induce many of the said free-hold tax payers aforesaid to sign said paper, it was represented to them by the agents and officers of the said defendant, the New Sharon Coal Valley and Eastern Railroad Company, that if they would sign the same they, the said signers, should not be compelled to pay any tax that might be voted should a sufficient number of signers be procured, and the matter should be submitted to an election and the tax be voted thereat; that the defendant, the railroad company aforesaid, would see that any tax that might be voted and which might thereunder be levied against such signers'
7 property should be cancelled and satisfied as against them without the payment thereof by them, and that said parties to whom such representations were made as aforesaid and being persuaded thereby, believed and relied thereon and so signed such petition in consideration of the said several promises so made as aforesaid.

IV. Your petitioner further represents and shows to the court that an election was held in said township at the time and place named and specified in the notice aforesaid, and at which election it was declared that a majority of the votes had been given in favor of said three per cent. tax, and thereupon the clerk of said township undertook to make out and file with the auditor of Jasper county a cer-
8 tificate of said election as provided by statute, but in so doing wholly and entirely failed to give, as required by law, all the conditions, stipulations, and provisions contained in the notice calling the said election; that is to say, among other things, it was stipulated in said notice that the tax should "be due and payable one-half the first year, provided the road shall then have been built and the trains running thereon from New Sharon to a depot within the corporate limits of the city of Newton, and within one-half mile of the public square in said city of Newton, Jasper county, Iowa, or as soon thereafter as said road may be built to said depot, provided it be within two years from the date of election, the remaining half payable the second year 1883."

That said clerk in his certificate gave and certified as follows:
9 "And on the further condition that said railroad shall be completed on or before the ninth day of May, 1883," a condition and stipulation not contained or found in said notice.

And the said notice also provided that the tax payers, upon a presentation of the certificate of the county treasurer, showing the amount of tax paid, should have for same stock of the railroad company, or he might have a transportation ticket, which should be receivable for one-fourth of a price of a ticket or freight bill on the line of the road until the entire amount should be exhausted, and

that said certificate utterly fails to give this stipulation or condition, or any part of it, and makes no reference thereto; a copy of which certificate is hereto attached, marked "B," and made a part of this petition.

V. Your petitioner further represents and shows to the court that the auditor of Jasper county had no power or authority under the notice of election and certificate aforesaid to place the said tax, so alleged to have been voted, upon the tax books of the county, not only because of the defects in the said certificate as aforesaid, but for the further reason that the said notice of election was wholly void, and of no effect, because such notice does not give the "line of railroad to be aided," only a name and a statement that the tax is to be due when a road is built from New Sharon to Newton, and yet he, the said auditor, has caused such tax to be extended upon the tax books, which books, with the tax extended thereon, is now in the hands of D. G. Winchell, who is the treasurer of Jasper county, Iowa.

VI. Your petitioner further represents and shows to the court that after the vote had been had on the ninth day of May aforesaid, the defendant, The New Sharon Coal Valley and Eastern Railroad Company, attempted, by the adoption of an amendment to their articles of incorporation, to change its name to that of the Chicago, Burlington & Pacific Railroad Company, and under the latter name work was continued on a line of road from Newton to New Sharon until about the first day of November, A. D. 1882, when the said The Chicago, Burlington & Pacific Railroad Company sold out, transferred, and surrendered possession of all the work that had been done by it to the Central Railway of Iowa, and from and after the time the former has and had no right or rights or interest therein.

VII. Your petitioner further represents and shows to the court that at the time the said work was turned over to the said Central railway of Iowa, a railroad had not been built from New Sharon to a depot within half a mile of the public square of the city of Newton, as stipulated in said notice; and the said the New Sharon Coal Valley and Eastern Railroad Company and the Chicago, Burlington & Pacific Railroad Company have not built such a railroad.

That as a part of such railroad cattle-guards must be made and placed where the same enters or leaves any improved or fenced land, and construct at all points where such railway crosses any public highway good, sufficient, and safe crossings and cattle-guards.

That no railroad is built until such cattle guards and safe crossings are made.

That along the entire line of said road at the time of the sale and transfer as aforesaid the defendant railroad company had made and placed but a few cattle guards, and had not constructed good, sufficient, and safe crossings.

That but two or three cattle guards had been placed at the highway crossings, although there were a great number of such along

the line, and none along and upon the improved lands of the adjoining land owners.

Your petitioner further alleges that said railroad was not
14 built, for the further reason that the roadbed had not been ballasted or sufficiently tied, and the said road was without wood or water stations, engines, or rolling stock of any sort or kind, and the said road was not builded or completed.

VIII. Your petitioner represents and shows further that notwithstanding all of the aforesaid matters and things, the said defendants, J. L. Mathews and W. B. Ritter, on the 30th day of Jan., A. D. 1883, as two of the township trustees, as aforesaid, attempted to certify to the treasurer of Jasper county that conditions which had been and was required of the New Sharon Coal Valley and Eastern Railroad Company had been complied —, and that it was entitled to the whole of the tax so voted as aforesaid, and entitled to draw the
15 same.

A copy of which said certificate is hereby attached, marked Exhibit "C," and made a part of this petition.

Your petitioner alleges that such certificate is without any force, effect, or validity, and confers upon the treasurer of Jasper county no authority to pay over the said tax if collected, because, at the time of the making the same there was no corporation by the name of the New Sharon Coal Valley and Eastern Railroad Company, and because the said certificate does not state that the conditions required had been fully complied with, and therefore the railroad corporation is entitled to receive the same.

Your petitioner further shows that the said defendants,
16 trustees as aforesaid, as your petitioner believes, will, if requested, make another and further certificate, and will therein make a sufficient statement to authorize the county treasurer to pay out any monies coming into his hands.

IX. Your petitioner further represents and shows to the court that by the sale, transfer, and surrender of possession, as before alleged, the said railroad company put it out of their power to comply with the conditions contained in their said notice in regard to stock, freight, or passenger tickets.

That by the sale, transfer, and surrender of possession, as before alleged, the said corporation defendant practically and to all intents and purposes ceased to exist, and had and has no power to
17 issue stock or means and appliances to transport either freight or passengers over its road, and that it has put it beyond its power to comply with the conditions contained in the said notice as aforesaid.

X. Your petitioner further represents and shows to the court that he is informed one A. Sully makes some claim to have and own some interest in said taxes, and he asks that he may be made a party defendant herein.

XI. Your petitioner further represents and shows to the court that the said treasurer, under and by virtue of the tax levy made as before alleged, is proceeding thereunder to collect the said tax, and unless restrained will continue so to do.

XII. Wherefore your petitioner prays that a temporary
18 writ of injunction may issue restraining the defendants, J. L. Mathews, W. B. Ritter, and J. N. Edge, trustees of Newton township, from making any further or additional certificate in relation to the said tax, and restraining and enjoining the defendant, D. G. Winchell, treasurer for Jasper. county, Iowa, from proceeding to collect said tax, or any part thereof, or from paying out to the railroad company or its assigns any monies already collected thereunder.

That upon the final hearing said injunction be made perpetual; that the said levy and assessment be declared illegal, null, and void; that the tax be declared also illegal, null, and void, and decreed to be cancelled, set aside, and held for naught, and for such other
19 and further relief as he may be entitled to in equity, and that he may have judgment for costs of suit.

WINSLOW & WILSON,
Att'ys for Pl't'ff.

STATE OF IOWA, }
Jasper County, } *ss:*

I, William R. Manning, being duly sworn, say that I am the plaintiff in this action; that the several matters and things alleged in the foregoing petition are true as I verily believe.

W. R. MANNING.

Subscribed and sworn to by William R. Manning, before me, and in my presence, this 13th day of March, A. D. 1883.

[SEAL.] H. S. WINSLOW,
Notary Public.

Affidavit of Non-residence.

20 In Circuit Court of Iowa, in and for Jasper County. April Term, A. D. 1883.

WILLIAM R. MANNING
vs.
J. L. MATHEWS, W. B. RITTER, J. N. EDGE, Trustees of Newton Township, Jasper Co., Iowa, D. G. Winchell, Treasurer of Jasper county, Iowa, the New Sharon Coal Valley and Eastern Railroad Company, the Chicago, Burlington and Pacific Railroad Company, and A. Sully.

STATE OF IOWA, }
Jasper County, } *ss:*

I, William R. Manning, being sworn, say that I am the
21 plaintiff in this suit, and that personal service of the notice of the pendency of this action cannot be made upon the defendant A. Sully, as he, the said A. Sully, is a non-resident of the State of Iowa.

W. R. MANNING.

Subscribed and sworn to by William R. Manning, this 16th day of March, A. D. 1883.

[SEAL.] H. S. WINSLOW,
Notary Public.

(Endorsed:) William R. Manning *vs.* J. L. Mathews, W. B. Ritter, & J. N. Edge, trustees, etc., *et al.* Circuit court. Affidavit of non-residence and for publication. Filed Mar. 16, 1883. M. P. Doud, clerk. Winslow & Wilson.

22 *Amendment to Petition.*

In the Circuit Court of Iowa in and for Jasper County. April Term, A. D. 1883.

WM. R. MANNING
v.
J. L. MATHEWS, W. B. RITTER, J. N. EDGE, Trustees of Newton Township, Jasper County, Iowa, D. G. Winchell, Treasurer of Jasper County, Iowa, the New Sharon Coal Valley and Eastern Railroad Company, the Chicago, Burlington & Pacific Railroad Company, and A. Sully.

STATE OF IOWA, *Jasper County,* } *ss:*

23 1. Your petitioner, for an amendment to his original petition filed herein, further represents and shows to the court that the defendants, the New Sharon Coal Valley and Eastern Railroad Company and the Chicago, Burlington & Pacific Railroad Company, nor any one for them have complied with the conditions and stipulations contained in the notice of election, in this, that they, nor any one for them, have not built a depot to which trains are running on said road within half a mile of the public square, in Newton aforesaid; but, on the contrary, you petitioner shows and *and* alleges that the depot building which has been erected, and to which trains are now running, the same being operated by the Central Railway of Iowa, is more than a half mile distant from said public
24 square by the nearest highway or travelled road leading from said square to said depot building.

Wherefore your petitioner prays as in his original petition.

WINSLOW & WILSON,
Att'ys for Plai't'ff.

STATE OF IOWA, *Jassper County,* } *ss:*

I, William R. Manning, being duly sworn, say that I am a plaintiff in this cause, and that the matters and things stated in this amendment to my original petition are true, as I verily believe.

W. R. MANNING.

Suscribed and sworn to by William R. Manning before me and in my presence, this 16th day of March, A. D. 1883.

[SEAL.] H. S. WINSLOW,
Notary Public.

(Endorsed:) William R. Manning *vs.* J. L. Mathews, W. B. Ritter, & J. N. Edge, trustees, ect., *et al.* Circuit court. Amendment to petition. Winslow & Wilson. Filed Mar. 16, 1883. M. P. Doud, clerk.

25 *Motion to Require the Plaintiff to Divide and Number the Several Causes of Action set out in the Petition.*

In the Circuit Court of Iowa in and for Jasper County. April Term, 1883.

WM. R. MANNING
vs.
J. L. MATHEWS *et al.*

STATE OF IOWA, } *ss:*
Jasper County, }

Now come the defendants and move the court to require the plaintiff to separate the several divisions in his petition into paragraphs, and to divide and number the several causes of action set out in his petition.

R. A. SANKEY &
A. K. CAMPBELL,
for Def'ts.

26 Endorsed: Wm. R. Manning *vs.* J. L. Mathews *et al.* Motion to require the plaintiff to divide and number the several causes of action in his petition. Filed Apr. 24, 1883. M. P. Doud, clerk.

27 STATE OF IOWA, } *ss.*
Jasper County, }

B. C. Ward, being duly sworn, says, that he is editor and proprietor of the Prairie City News, a weekly newspaper of general circulation, printed at Prairie City, in said county, and that the notice hereto attached was published in said newspaper for four successive weeks, to wit, March 23, 30, and April 6, 13, 1883; and further saith not.

B. C. WARD.

Subscribed in my presence and sworn to before me by B. C. Ward, this 17th day of April, 1883.

[SEAL.] W. G. CLEMENTS,
Notary Public.

Publication fee,	$5 00
Certificate,	25
Total	$5 25

28 *Original notice.*

STATE OF IOWA, } ss.
Jasper County, }

To J. L. Mathews, W. B. Ritter, and J. N. Edge, trustees of Newton township, Jasper county, Iowa; D. G. Winchell, treasurer of Jasper county, Iowa; the New Sharon Coal Valley and Eastern Railroad Company; the Chicago, Burlington & Pacific Railroad Company and A. Sully:

You are hereby notified that there is now on trial in the office of the clerk of the circuit court of Jasper county, Iowa, the petition of William R. Manning, claiming of you that the tax alleged to have been voted by Newton township is void and uncollectable, for reasons therein stated, and praying that the defendant trustees
29 be enjoined from certifying that the conditions agreed by the railroad company have been complied with, and praying that the treasurer be enjoined from collecting said tax or paying out any that has been collected, and for other relief, and that a temporary writ of injunction has issued against you, and unless you appear on or before noon of the second day of the next term of said circuit court, to be commenced on the 4 Monday in April, A. D. 1883, the same being the 23 day of said month and year, and make defense to said claim, your default will be entered and a judgment and decree rendered against you as prayed for in said petition, and for costs of suit.

WINSLOW & WILSON,
Attorneys for Plaintiff.

30 (Endorsed:) Manning *vs.* Mathews *et al.* Filed Apr. 18, 1883.

M. P. DOUD, *Clerk.*

31 *Original Notice.*

STATE OF IOWA, } ss:
Jasper County, }

To J. L. Mathews, W. B. Ritter, J. N. Edge, trustees of Newton township, Jasper county, Iowa, D. G. Winchell, treasurer of Jasper county, Iowa, The New Sharon Coal Valley and Eastern Railroad Company, The Chicago, Burlington and Pacific Railroad Company, and A. Sully:

You are hereby notified that there is now on file in the office of the clerk of the circuit court of Jasper county, Iowa, the petition of William R. Manning, claiming of you that the tax alleged to have been voted by Newton township is void and uncollectible for reasons therein stated, and praying that the defendant trustees be en-
32 joined from certifying that the conditions agreed by the railroad company have been complied with, and praying that the treasurer be enjoined from collecting said tax or paying out any that has been collected, and for other relief, and unless you appear, on or before noon of the second day of the next term of said circuit

court, to be commenced on the fourth Monday of April, A. D. 1883, the same being the 23rd day of said month and year, and make defense to said claim, your default will be entered and a judgment and decree entered against you as prayed for in said petition, and for cost of suit.

WINSLOW & WILSON,
Attorneys for Plaintiff.

STATE OF IOWA, *Jasper County:*

33 Received the within notice on the 16th day of March, 1883, and I hereby certify that I served the same personally on the 16th day of March, 1883, by reading the same to the within-named J. N. Edge, one of the trustees of Newton township, D. G. Winchell, treasurer of Jasper county, Iowa, and S. C. Cook, president of C. B. & P. R. R. Co., personally, and by delivering to each personally a copy of the within notice, at Newton township, Jasper county, Iowa.

J. L. HUNTER,
Sheriff of Jasper County, Iowa.

I served the within notice on W. B. Ritter and J. L. Mathews, trustees of Newton township, Jasper county, Iowa, on the 18th day of March, 1883, by reading the within notice and delivering to each a copy of the same in Newton township, Jasper county, Iowa.

34 J. L. HUNTER,
Sheriff, Jasper County, Iowa.

(End.:) Original notice. Circuit court. William R. Manning *vs.* J. L. Mathews, *et al.* Fees: service, $1.50; mileage, .10; copy, 1.00—$2.60. Filed April 14, 1883. M. R. Doud, clerk.

Writ of Injunction.

The State of Iowa to J. L. Mathews, W. B. Ritter, & J. N. Edge, trustees of Newton township, Jasper county, Iowa, & D. G. Winchell, treasurer of Jasper Co., Iowa, defendant.

Whereas, William R. Manning, as plaintiff, has this day
35 filed in the office of the clerk of the circuit court of the State of Iowa, in and for Jasper Co., Iowa, a petition duly sworn to, making J. L. Mathews, W. B. Ritter, & J. N. Edge, trustees of Newton t'w'p, Jasper Co., Iowa, D. G. Winchell, treasurer of said county, the N. S. C. V. & E. R. R. Co., the Chicago, Burlington & Pacific Railroad Co., A. Sully, defendants therein, and praying that they may be restrained from making any further or additional certificate in relation to the tax levied or assessed in aid of the N. S. C. V. & E. R. R. Co., and restraining and enjoining the def't, D. G. Winchell, treasurer for Jasper Co., Ia., from proceeding to collect said tax, or any part thereof, or from paying out to the R. R. Co. or its assigns any monies already collected thereunder.

And whereas, the Hon. W. R. Lewis, judge of the circuit
36 court of the State of Iowa, in and for Jasper county, has this day made an order allowing said writ of injunction to issue

upon the filing of a bond with sureties, pursuant to said order; and whereas, said order has been complied with, and such bond filed and sureties approved:

Now, therefore, you, the said J. L. Mathews, W. B. Ritter, & J. N. Edge, trustees of Newton t'w'p, Jasper Co., Iowa, and D. G. Winchell, treasurer of Jasper county, defendants as aforesaid, are hereby strictly enjoined and restrained from making any further or additional certificate in relation to the tax levied or assessed in aid of the N. S. C. V. & E. R. R. Co., and restraining and enjoining the def't, D. G. Winchell, treasurer for Jasper Co., Iowa, from proceeding to collect said tax, or any part thereof, or from paying out to
37 R. R. Co. or assigns any money already collected thereunder until the further order of our circuit court in the premise. And this injunction was strictly observed under the penalties of the law.

Witness:

M. P. DOUD,
Clerk of said Court.

With the seal thereof hereto affixed, this 16th day of March, 1883.

[SEAL.] M. P. DOUD,
Clerk of the Circuit Court.

STATE OF IOWA, }
Jasper County, } *ss:*

I received the within writ of injunction on the 16th day of March, 1883, and served the same on J. N. Edge, one of the trustees of Newton township, Jasper county, Iowa, and D. G. Winchell, treasurer of Jasper county, Iowa, and S. C. Cook, president of the C. B. & P. R. R. Co., by reading the within writ to each of the above-
38 named, and delivering to each a copy of the same on the 16th day of March, 1883, in Newton t'p, Jasper county, Iowa, and on W. B. Ritter and J. L. Mathews, trustees of Newton, by reading the within writ to each of them, and delivering to each a copy of the same on the 18th day of March, 1883, in Newton t'p, Jasper county, Iowa.

J. L. HUNTER,
Sheriff Jasper County, Iowa.

Fees:

Copies	$3.00
Mileage	$0.10
Service	$2.00
	$5.10

(Endorsed:) Writ of injunction. Circuit court. Wm. R. Manning *vs.* J. L. Mathews *et al.* Filed Apr. 14, 1883. M. P. Doud, clerk. Winslow & Wilson, attorneys for plaintiff.

39 *Motion to Strike — Petition and for more Specific Statement and to Dissolve Injunction.*

In the Circuit Court of Iowa, in and for Jasper County. April Term, A. D. 1883.

WILLIAM R. MANNING
vs.
J. L. MATHEWS *et al.*

STATE OF IOWA, }
Jasper County, } *ss:*

Now come the defendants and move the court to strike out the following parts of the petition herein for the reasons stated:

1st. The amendment to said petition for the reason that said amendment presents no cause of action, in this said amendment alleges that the depot of the railroad co. "is more than a half
40 mile distant from said public square by the nearest highway or traveled road leading from said square to said depot building," while the contract with the township upon which the tax was voted, and which is made part of petition herein, does not require the distance to be by the nearest traveled highway or road, but in a direct line, and said amendment does not allege that the depot is not within a half mile of the public square by a direct line.

Further, because said amendment is immaterial, irrelevant, and redundant.

2nd. To strike out all of the first paragraph of the petition, commencing at the beginning of the second line from the bottom of the first page with the words "and he brings this action not only in his own behalf, etc." to the end of said paragraph.

41 Because no authority is shown in the petition for plaintiff to appear for any person except himself.

2. This court has no jurisdiction over persons not before the court to bind them for costs, or in any other manner, or to adjudicate for parties not before the court.

3. Parties to obtain the benefits of an adjudication must be either defendants or plaintiffs.

4. The petition nowhere shows that any other person except the plaintiff is complaining of the tax.

3rd. To strike [out] the second paragraph of said petition because the same does not set out any cause of action, and for the reason that the matters in said paragraph are immaterial, irrelevant, and redundant.

Because the action of the trustees in passing upon the petition cannot be assailed in a collateral proceeding.

42 4th. To strike [out] paragraph three for the reason that said paragraph is immaterial and redundant, and because the matters therein complained of have been adjudicated by the trustees, and their finding can only be reviewed in a direct proceeding.

5th. To strike [out] paragraph four for the reason that the matters and things therein set out are immaterial.

The board of supervisors having passed upon the sufficiency of the notice, it cannot be attacked collaterally.

Also, because the provision for issuing transportation certificates can only be raised after the payment of the tax, and for that reason it is immaterial whether contained in the clerk's certificate or not.

43 6th. To strike paragraph five, because no cause of action is stated in said paragraph.

The auditor being only the clerk of the board of supervisors, and the supervisors having passed upon the sufficiency of the certificate and levied the tax, it was the duty of the auditor to carry out their orders, and he committed no error in doing so.

Therefore the matters in said paragraph are immaterial, irrelevant, and redundant.

Because the road is sufficiently described.

7th. To strike paragraph six, because the statutes of Iowa expressly authorize railway corporations to change their name without losing any of their rights or privileges.

44 It is no defense to the collection of the tax that the Chicago, Burlington and Pacific Railroad Co. sold to the Central Iowa, and no injury is alleged to have been sustained by the tax payers of Newton township thereby, or any violation of the contract between the township and the railroad company.

8th. To strike paragraph seven, for the reason that the matters therein alleged are immaterial, irrelevant, and redundant, and contain no cause of action.

Because the petition shows the railroad was built and the cars running thereon within the period stated in the notice of the election, and that was a compliance with the terms of the contract between the township and the railroad company.

45 And because it is nowhere charged in said paragraph that the road was not built and trains running thereon within two years from the date of the election.

9th. To strike paragraph eight, for the reason that it is wholly immaterial and irrelevant.

That the trustees' certificate is only for the purpose of authorizing the treasurer to pay the tax collected to the railroad Co.

That it is no concern of this plaintiff what kind of a certificate they make; he does not claim to have paid his taxes or to have any money in the hands of the treasurer.

And because the trustees are required by law to make the certificate when they are satisfied the railroad company have complied with the conditions upon which the tax was voted.

46 10th. To strike paragraph nine, for the reasons that the matters therein alleged are immaterial and irrelvant, and set up no cause of action.

Because it is not alleged anywhere in the petition that the railroad company have not or are unable to have the provision as to transportation tickets carried out by the Central Railway.

And there is nothing but the bare allegation of a sale contained in the petition, none of its terms stated, no evidence of the sale or

transfer set out, and no showing that the railroad company is not able to fulfill the requirements of the law as to issuing stock for taxes paid.

Further, plaintiff not having paid his tax, cannot object to that to which he is not entitled to have, and never will be entitled to until his tax is paid.

47 He must first fulfill his part of the contract before he can be heard in a court of equity.

11th. To strike the name of the trustees from the defendants, because no cause of action is alleged against them.

1st. And defendants further say, that if the court should be of the opinion that the second paragraph of the motion should not be sustained, then defendants move the court to require the plaintiff to set out specifically the parties whom he claims to represent, their names, and what common interest they or either of them have with plaintiff as to the matters in controversy in this suit; what desire they have to join with plaintiff, and in what manner they

48 have expressed such desire, and if in writing to attach a copy of same; how extensive his knowledge of the wishes of the other tax-payers of Newton t'p to join in this litigation is and how obtained, and by what manner and means they selected and appointed him as their representative.

2nd. And if she court should be of the opinion that the matters set out in the third paragraph of the petition should not be stricken out, then defendants move the court to require the plaintiff to specifically set out:

1st. What agent of the New Sharon Coal Valley and Eastern Railroad Company made the representations that if persons would sign the petition for the election and a tax was subsequently voted their tax would be released?

49 2nd. To whom were such representations made, and who signed said petition because of such representations and on the faith thereof?

1. And defendants further move the court to modify and dissolve the injunction herein issued as follows:

1st. To dissolve said injunction as to all persons except the plaintiff Manning.

2nd. To dissolve the same as against the treasurer for all taxes except the taxes of Manning.

3d. To direct the treasurer to pay the money as collected to the railroad Co. and its assignee.

4th. To dissolve the injunction *in toto*: Because there is no sufficient cause shown in the petition for the issuance of a writ of injunction.

Because the statements of the petition do not authorize the

50 issuance of a writ of injunction, nothing but irregularities being alleged.

Because there is no equity in the bill and nothing therein contained to authorize the interposition of a court of equity.

Because if plaintiff has been or will be aggrieved he has a com-complete remedy for his grievance at law.

Because no allegation is made in the petition that plaintiff does not have an adequate remedy at law.

R. A. SANKEY &
A. K. CAMPBELL,
For Def'ts.

(End.:) W. R. Manning *vs.* J. L. Mathews *et al.* Motion to strike and for more specific statement, and to dissolve injunction. Filed April 25, 1883. M. P. Doud, clerk.

51 *Amendment to Petition.*

In the Circuit Court of Iowa, in and for Jasper County. April Term, A. D. 1883.

WILLIAM R. MANNING *et al. vs.* J. L. MATHEWS *et al.*

STATE OF IOWA, } *ss:*
Jasper County, }

1. By leave of the court first had and obtained the plaintiff, amending his petition, makes the following persons co-plaintiffs and parties to this action, that is to say: S. G. Smith, Hugh McElroy, John Claussen, J. C. Hickman, A. L. Moore, S. S. Wormley, James McCarthy, D. L. Clark, Clara A. Kerr, J. P. Cox, Wm. H. Robinson, G. W. Duncan, C. McConkey, A. Scharf, Adam Sharf, V. W.
52 Skiff, N. S. Kenyon, Z. W. Houk, S. McKean, Silas Logsdon, C. L. Viles, W. A. Loomis, L. M. Baker, J. M. Likes, W. S. Langmaid, J. P. Ramer, Wm. Eugle, W. H. Craig, Daniel Rorabaugh, H. McMurray, S. E. Gates, H. Kennington, John Hartwig, J. R. Sitler, W. H. Silsby, J.Y. Kennedy, John R. Lamb, James Kirk, Joseph Hopton, Wm. Vaughan, Green Bridgs, Jasper Loomis, W. M. M. McLean, Samuel Beales, E. J. Loomis, J. E. Benjamin, A. Garrier, James Allen, Thomas J. Beales, T. Clutter, Aaron Hammer, F. T. Campbell, J. M. Miller, Geo. T. Anderson, W. H. Perdoe, J. M. Hiatt, J. P. Beatty, S. R. Benjamin, Thos. Peer, Charles Jasper, F. M. Robinson, L. M. Bigelow, W. Henning, George Shoemaker, George B. Hunter, W. H. Hough, A. J. Osborn, Wm. Vaughan & Sons, August Wendt, A. C. Bolnaefer, W. H. L. King, George B. Hogin, Henry Warren, D. J. Eberhart & Co., W. W. Morton, M. F. Peavey, J. R.
53 Garrell, I. B. Carns, Wm. Lister, C. Iske, Alexander Brown, P. Brill, J. B. O'Neall, F. C. Ellers, J. W. Wittbank, H. K. Parker, Peter Groves, E. J. Fullerton, J. H. Lyday, B. M. Falor, John Erricson, O. G. W. Adams, Moses Houghton, E. N. Hollen, Robert Burns, J. H. Allen, W. N. Harran, S. Veach, L. D. Kennedy, E. B. Moffit, C. P. Klein, Jonathan Lister, D. Watts, Thos. Vannatta, F. W. Cozad, C. Griebling, J. M. Stone, C. Seymour, H. Sampey, J. W. Wilson, Thos. Lister, J. H. Chapman, F. Griebling, F. P. Miller, J. B. Hough, Miller & Hough, Geo. W. Guthrie, D. Finch, T. F. Brown, Peter Nelson, Frank Reeves, O. J. Clements, M. B. Atwater, Thos. Morrisey, D. Sturdevant, Perry Bridges, J. W. Davis, David Harris, A. Haynes, Wm. Wilson, E. Swinart, James Farley, A. Pittit, Frank Wyatt, Shelby Wyatt, Levi Erwin, John X. Davis, James
54 Powell, James Kelley, Aaron Hill, J. R. Crawford, C. P. Van-

gilder, D. Wormley, A. M. Harrah, A. L. Harrah, Geo. Hanger, F. A. Reckler, John Munn, J. B. McIllice, Dennis Kelley, E. W. Chapman, A. J. Brocan; and they, your petitioners, represent and show to the court that they and each one of them are tax payers in Newton township, Jasper county, Iowa, and were such at the times of the happening of the several events, matters, and things stated in the original petition, to which this is amendatory, and on file herein.

That at said times, and now, they were and are the owners in severalty of property which was and is liable to taxation, and that the tax books show an attempted levy of the tax against them and their property, and against each of them upon their separate property, as in the said original petition recited, and each and every alle-
55 gation and averment in said original petition made is now by these plaintiffs, your petitioners, adopted, and with the amendments hereafter and hereinbefore set forth, constitutes their cause of complaint.

Your petitioners further show that while the said property owned by them is in severalty, yet inasmuch as the tax recited and complained of is wholly illegal, null, and void, and the attempted assessment and levy is in like manner illegal and void, these several petitioners are alike in the same manner affected thereby, and interested therein, and to the end therefore that a multiplicity of suits may be avoided, and at the same time complete justice be done them, they now, and here jointly bring, prosecute, and maintain this suit, not only for themselves, but for all others who
56 may on account of the grievances alleged seek the same relief upon this common cause and ground of action.

II. Your petitioners further represent and show to the court by way of amendment to the fifth paragraph in the original petition, that the notice of the said election was and is fatally defective, for the further reason that the same does not state the amount of work upon the said proposed railroad line required to be completed before the said tax shall be paid to the railroad company, which by the statute then in force was required to be stated, and the said notice does not state when such work shall be performed, and to what point the said road shall be fully completed, all of which was then required by the law to be made, done, and set forth
57 in the notice by reason thereof, and by reason of other defects and failures, the said notice was and is wholly illegal and void, and the same conferred upon the trustees no authority whatever to hold an election thereunder, and the vote had and polled thereat, and all subsequent proceedings thereunder, and the attempted levy of a tax, was and is null, void, and of no effect.

III. Your petitioners further represent and show to the court by way of amendment to the fourth paragraph in the original petition that the certificate of the township clerk is and was also fatally defective, for the further reason that it fails to state the time and terms upon which the said tax when collected is to be paid over to the
58 railroad company under the conditions and stipulations in the said notice, such statement being required by law and essen-

tial to its validity, and your petitioners aver that by reason of such failure the said certificate is wholly and entirely void, and the auditor of the county had no right or authority thereunder to extend the tax voted at said election upon the tax-books, and any attempted assessment or levy is without any authority or warrant in law, and opposed to common right, and is wholly void.

IV. Your petitioners further represent and show to the court that by the articles of incorporation of the New Sharon Coal Valley and Eastern Railroad Company, and which articles had been adopted and were in force at the time of the voting of the tax in its aid, it is in substance provided that its line of road was south-
59 easterly from Newton by the way of New Sharon to the eastern borders of Iowa and the Mississippi river.

That after the tax was voted and after much work had been done southeasterly from New Sharon, the same was wholly abandoned and a change was made whereby the Chicago, Burlington and Pacific Railroad Company, as the successor of the New Sharon Coal Valley and Eastern Railroad Company, was to use the roadbed and track of the Central Railway of Iowa from New Sharon to Oskaloosa, a distance of about eighteen miles, and the project of building the said road between said points was and is wholly abandoned.

That from Oskaloosa said company claimed to have built a road southeasterly to the river, and to have a continuous line by
60 the use of said Central railway line as before stated.

That after said arrangement had been perfected, or as part of the same, the sale was made to said Central Railway, as before alleged.

That such change in the original route and line as designated by the articles of incorporation are material, and the abandonment of a part of the route, as before stated, operated to and does release the tax payers of Newton township from the payment of any tax voted in its aid.

V. Your petitioners further represent and show to the court, that at the time the said road was sold and transferred to the Central Railway of Iowa, as stated in the ninth paragraph in the original petition, the said railroad was not then and is not now fully
61 completed, as in said paragraph stated.

Wherefore, your petitioners pray that this suit may be continued in their name and in their behalf, and in behalf of all other tax payers in said township who may from time to time hereafter join with them.

That the injunction heretofore granted may be continued in all respects, except as now modified, and that all the relief prayed in the original petition be granted, and such other and farther relief as may be equitable under the facts stated.

WINSLOW & WILSON,
Att'ys for Pl'tff.

STATE OF IOWA, } ss:
Jasper County, }

I, William R. Manning, being sworn, say: That I am one
62 of the plaintiffs in this action, and that the matters and things stated in this amendment to the original petition are true, as I verily believe.

W. R. MANNING.

Subscribed and sworn to by William R. Manning, before me and in my presence, this 30th day of April, A. D. 1883.

[SEAL.] H. S. WINSLOW,
Notary Public.

(Endorsed:) William R. Manning *et al. vs.* John L. Mathews *et al.* Circuit court. Amendment to petition. Filed April 30, 1883. M. P. Doud, clerk. Winslow & Wilson.

63 *Motion to Strike.*

In Circuit Court, Jasper County, Iowa.

WM. R. MANNING *v.* J. L. MATHEWS *et al.*

Now comes defendant and moves the court to strike from amendment to petition division one—

Because it seeks to improperly join parties who have no common or general interest in the subject-matter of this suit.

Because it seeks to bring in as parties to this suit persons who have not yet made up their mind whether they want to be parties or not.

2. To strike out the last five lines of Division I, beginning with the words "not only for themselves."

Because it seeks to bring in parties not contemplated or provided for in law.

Because it fails to show any interest in the subject-matter of the
64 suit by unknown parties who may not now be citizens of the township, but for whom plaintiff is no doubt watching and waiting for, hoping he may have more help in paying costs and attorneys' fees.

R. A. SANKEY &
A. K. CAMPBELL,
Att'ys for Def't.

(End.:) Filed May 1, 1883. M. P. Doud, clerk.

65 *Motion.*

In Circuit Court of Iowa in and for Jasper County.

W. R. MANNING *et al. v.* D. G. WINCHELL *et al.*

Defendants move the court to modify the injunction herein

wherein it enjoins the treasurer of said county from paying out to the railroad company any taxes paid in to the treasury of the county.

1. Because parties to the suit can have no interest nor right in controlling the taxes of other tax payers who may desire that the railroad Co. have the benefit of their taxes.

2. Because parties to this suit will become liable, without any corresponding benefit, in the event the tax is declared valid, for the penalty and interest which would otherwise accrue on taxes paid in and held in the treasury by this injunction.

3. Because these parties do not sue in a representative capacity, representing all the tax payers, but for themselves alone, and are only permitted to join to save multiplicity of suits.

4. Because the rights of the parties herein can be fully determined without being concerned in any manner with the taxes of other parties.

5. Because this court has no jurisdiction in this cause, of any taxes paid in, or to be paid in, except the taxes of the parties to this suit, and can have no right to extend its injunction over the taxes of parties in no way in court.

II.

Defendants move the court to so modify the injunction that the treasurer of said county shall be allowed to collect the taxes of all persons not parties to this suit as other taxes are collected, for the above reasons.

67 III.

Defendants move the court to increase the bond herein to fifteen thousand dollars, because no less sum would be adequate.

R. A. SANKEY & A. K. CAMPBELL,
Att'ys for Def'ts.

(End.:) Filed May 4, 1883. M. P. Doud, clerk.

68 *Answer.*

STATE OF IOWA, }
Jasper County, } *ss:*

In the Circuit Court of Iowa in and for Jasper County. April Term, A. D. 1883.

WILLIAM R. MANNING *vs.* J. L. MATHEWS *et al.*

Now come the defendants, and for answer to petition of the plaintiffs herein, and of the amendment thereto, say:

Deny that the defendant, The Chicago, Burlington and Pacific Railroad Company, have not built a depot to which trains are running on said road within half a mile of the public square in Newton, and aver that said depot is within one-half mile of the public square of said town of Newton, and that trains run regularly thereto.

Defendants deny that plaintiffs have such a general and common interest in the tax in dispute as to entitle them to join in one
69 suit, and alleges that they have no interest in common, but that whatever interest they have it is in severalty.

Admit that a special election was held in Newton township on the 9th day of May, 1881, after due notice, to aid in the construction of The New Sharon Coal Valley and Eastern railroad, have provided in the notice for said special election.

Admit that the notice for the special election was based upon a petition presented to the trustees of the township, as provided by law, and that said trustees passed thereon, and ordered the election.

Deny that, to induce many of the said freehold tax payers to sign said paper, it was represented to them by the agents and officers of the said railroad Co. that if they would sign the same they, the said signers, should not be compelled to pay any tax that might be voted.

Deny that any representations whatever were authorized to
70 be made by said New Sharon Coal Valley and Eastern Railroad Co. to procure signers to said petition, or that any representations were made by any agent or officer of said corporation to procure signers to said petition; or that any agent or officer of said corporation acted as such in procuring signers to said petition.

And defendants aver that all matters pertaining to the regularity and sufficiency of said petition were duly passed upon by the trustees, and that their action thereon was final and conclusive until reversed on appeal, or some other direct proceeding provided by law; and that no appeal or other direct proceeding has ever been taken from the action of said trustees upon said petition.

Admit that an election was held in Newton township at the time stated in the notice, and that at said election a large majority of the votes cast was for the three per cent. tax.

71 Admit that after said election the clerk of Newton township certified to the county auditor that said tax had been voted, accompanied by a copy of the notice of the election; and also admit that said certificate of the clerk does not set out in full all the conditions contained in the notice, but allege that it does contain all the essential conditions upon which the tax was voted between the railroad company and the people.

Deny that the auditor of Jasper county had no authority to extend the said three per cent. tax, or that the notice of election was void, or that the notice does not give the line of road to be aided.

Admit that the auditor has extended said tax on the tax-lists of Newton township.

Defendants further aver that said notice of the special election was one of the things passed upon by the township trustees, and that their action thereon has never been appealed from or other
72 direct means taken to review the same, and that it cannot be attacked in this collateral proceeding, but that the action of the trustees is final thereon.

That the board of supervisors of Jasper county at their September session, A. D. 1881, passed upon the certificate of the township clerk

and levied the said three per cent. tax in manner and form as provided by law, and that the auditor, in pursuance of the said levy by the board of supervisors, extended the said tax on the tax-lists of Newton township.

Admit that after the 9th day of May, 1881, the name of the New Sharon Coal Valley and Eastern Railroad Co. was changed to the Chicago, Burlington & Pacific Railroad Co., and that under said name work was continued on their line of road

Admit that the Chicago, Burlington and Pacific Railroad Co. sold their line of road to the Central Iowa, but deny that on such
73 sale being made they surrendered possession to the Central of all work done by it, and after that time said company has and had no right or rights or interest therein, but aver the truth to be that as provided by the terms of the sale the said Chicago, Burlington & Pacific Railroad Co. retained possession of the road and completed the same according to their contract.

Admit that at the time of the sale to the Central Iowa the railroad being built by the Chicago, Burlington and Pacific from New Sharon to Newton, Iowa, had not been completed, but aver that it was completed and the cars running thereon to a depot within half a mile of the public square in Newton, Iowa, when it was turned over to the Central Iowa.

Deny each allegation of the petition relative to said railroad not being completed, and allege that said railroad has been completed and the trains running regularly thereon from New Sharon to Newton for the past six months or more.

74 Admit that the defendants, J. L. Mathews and W. B. Ritter, trustees of Newton township, have certified that the railroad company have sufficiently complied with their contract with the township as to entitle said company and its assigns to receive said tax as voted, and said def'ts aver that it was their duty to make such certificate, because they did and do believe that the terms upon which said tax was voted have been complied with by the Chicago, Burlington & Pacific Railroad Co., and that they are entitled to receive said tax.

Deny that said certificate is not sufficient to authorize the treasurer to pay over said money to the railroad company, but, on the contrary, defendants aver that it is amply sufficient for the purposes for which it was executed.

Deny that the railroad company, by the sale of its road, put it out of its power to comply with the conditions contained
75 in the notice in regard to stock, freight, or passenger tickets, and that by said sale, etc., said company practically, to all intents and purposes, ceased to exist, and has no power to issue stock, etc.; and defendants aver that it neither follows as a matter of fact or a conclusion of law that by the sale of the road to said company put it out of their power to arrange for stock, freight, or passenger tickets, and def'ts allege that the same arrangement is to continue for stock, freight, or passenger tickets as if they had continued to operate the said road; and defendants further aver that said corporation known as the Chicago, Burlington & Pacific railroad is

still in existence, has property aside from the line of road sold to the Central, and still retains its franchises; that it always has been, and is now, ready to perform its part of every contract it has
76 made, and is now ready to give stock to those who are entitled to receive it when the tax receipts are presented in manner and form as provided by the statute.

Admit that defendant A. Sully claims an interest by assignment in said taxes.

Admit that the treasurer is receiving the taxes from all those offering to pay the same.

Deny that the notice of said special election does not state the amount of work to be done, or where such work shall be performed, and to what point the said road was to be completed, but defendants aver that said notice provides that the road shall be built from New Sharon to Newton, the building of the road was the work to be performed, the place between Newton and New Sharon, and the road was to be constructed to Newton, but def'ts aver that said notice was adjudicated by the trustees, and is now *res adjudicata.*

Deny that the certificate of the clerk is fatally defective, or
77 defective at all, except in so far as it does not fully set out all the conditions contained in the notice, and that at most is a mere irregularity and in no manner affects the validity of the tax or the validity of the levy.

Admit that the Chicago, Burlington & Pacific Railroad Company changed their line from New Sharon southeasterly to Oskaloosa, and run from there to the west bank of the Mississippi river opposite Keithsburg, Illinois; but defendants aver that these plaintiffs have nothing to do whatever with such change; that said tax was voted for a railway from New Sharon to Newton, and such road was built and is now in operation; that the articles of incorporation have nothing whatever to do with the voting of the tax in Newton township.

And defendants deny each and every other allegation in said petition and amendments thereto not hereinbefore admitted,

78 II. And, further answering, defendants aver that on the 9th day of May, 1881, the voters of Newton township, by a majority of one hundred and sixty-three, voted a three per cent. tax in aid of the construction of the New Sharon Coal Valley and Eastern railroad upon the assessed valuation of the property of said Newton township; that by the terms of the notices upon which said election was held it was required of the railroad company to construct a line of road from New Sharon to the town of Newton, and to a depot within a half mile of the public square, and have the trains running on said road before tax became due and collectible, a copy of which said notice of election is hereto attached, marked Exhibit "A," and made a part hereof; that in December, 1881, at the annual meeting of the stockholders of the New Sharon Coal Valley and Eastern Rail-
road Company, the name of said corporation was changed to
79 the Chicago, Burlington & Pacific Railroad Company, by which name said company has ever since been known; that said company proceeded to construct said railroad and did construct

the same as provided by the notice and within the time in said notice specified, and that thereupon, and after said road had been constructed and the cars running thereon to a depot within a half mile of the public square of the town of Newton, the trustees of said township of Newton certified that said contract had been complied with and said railroad company entitled to receive said tax.

III. Defendants, further answering, say that in May, 1882, the Chicago, Burlington & Pacific Railroad Company sold their line of road from Newton to New Sharon and from Oskaloosa to the Mississippi river to the Central railway of Iowa, but that said sale was upon the express terms and condition that the said Chicago, Bur-
80 lington & Pacific Railroad Company was to complete said line of road; that in pursuance thereof said company did complete its line of road, and retained possession thereof until the same was constructed. That said sale in no way or manner affected the rights or interests of any of the tax payers of Newton township, except that it gave them additional outlets. That said Central Iowa Railway was and is a competing line to the Rock Island Railroad Co., and furnishes the citizens of Newton township additional competition for the carriage of freight. That said Central Railway of Iowa, by reason of having over one hundred miles of road already in operation and provided with rolling stock and other appliances to immediately operate said road as fast as constructed, did, in fact, furnish better facilities and more conveniences at an earlier date then said Chicago, Burlington & Pacific Railroad Com-
81 pany could have done. That in truth and in fact the tax payers of Newton township, instead of being injured, are benefited by said sale. That not only the same competition and outlet is furnished as would have been done by the Chicago, Burlington & Pacific Railroad Co., but that additional outlets and connections are furnished. That a continuous line of road extends from Newton, by the way of Oskaloosa, to Peoria, Illinois, which is more than was ever contemplated by the Chicago, Burlington and Pacific. Wherefore, defendants say that the plaintiffs have sustained no damage by reason of the transfer of the line of road.

IV. Defendants, further answering, say that the said plaintiff stood by and permitted the defendant railway company to expend large sums of money in building its line of road from New Sharon to Newton, knowing that said sums were being expended and
82 the road built upon the faith of said tax and the tax of Lynn Grove township, and that neither of said plaintiffs made any objection thereto, or to the said tax, until after said road was completed and the trains running thereon; wherefore, defendants say the plaintiffs are barred and estopped from now setting up any defense to the payment of said tax.

V. Defendants, further answering, say that after said special election, the clerk of Newton township, as the agent of the voters of said township, and as provided by law, proceeded to make a certificate to the auditor of Jasper county of the result of said election, and accompanied the same with a certified copy of the notice upon which said election was held; that in making said certificate (a copy of

which is hereto attached, marked Exhibit "B," and made
83 a part hereof) said clerk did not enumerate in full all of the conditions contained in the notice, but that the board of supervisors found them sufficient to levy said special tax, and cause the same to be extended on the tax-list of Newton township; but defendants further say that if the court, upon the final hearing hereof, should be of the opinion that the irregularities of said certificates should be corrected, or are of sufficient importance to affect the levy of said tax, that they asked the court, in such case, to make an order requiring the township clerk to make such additional certificate as will cure the irregularity.

Wherefore, and by reason of the foregoing, the defendants ask that, upon the final hearing hereof, the temporary injunction in this case issued be dissolved; that the treasurer be directed to collect said special tax and pay the same to the railroad company,
84 or assigns, and that defendants have judgment against plaintiffs for the costs of this action.

A. K. CAMPBELL &
R. A. SANKEY,
Att'ys for Def'ts.

STATE OF IOWA, } ss:
Jasper County, }

I, S. R. Oldaker, being duly sworn, say: That I have read the foregoing answer, and know the contents thereof; that I am acquainted with the several matters therein stated, and the several allegations therein contained are true, as I verily believe.

S. R. OLDAKER.

Subscribed and sworn to before me and in my presence by S. R. Oldaker, May 9th, 1883.

[SEAL.] J. M. CLEMENTS,
Notary Public.

85 EXHIBIT "B."

Filed for record May 16, 1881, at nine o'clock a. m.
THOS. M. RODGERS, *Recorder.*

Newton township certificate of vote in aid of New Sharon Coal Valley and Eastern R. R.

STATE OF IOWA, } ss:
Jasper County, }

I, S. H. Galusha, clerk of Newton township, Jasper county, Iowa, do hereby certify that at a special election held for that purpose in Newton township, Jasper county, Iowa, on the ninth day of May, 1881, a tax of three per cent. on the assessed value of the taxable property of said township was voted by the electors thereof for the purpose of aiding in the construction of the New Sharon Coal Valley and Eastern railroad, as by law in such cases made and pro-

vided; one-half of said tax to be collected the first year, 1882,
86 or when the road shall have been built and the trains running thereon from New Sharon to a depot within the corporate limits of the city of Newton and within one-half mile of the public square in said city of Newton. The other half of said tax to be collected the second year, 1883, and on the further condition that said railroad shall be completed on or before the 9th day of May, 1883, and the trains running thereon as above provided. An exact copy of the notice of said election is hereto attached, marked Exhibit "A," and made a part hereof.

Given under my hand, this 14th day of May, A. D. 1881.

S. H. GALUSHA,
Clerk Newton T'p, Jasper County, Iowa.

(End.:) W. R. Manning *vs.* J. L. Mathews *et al.* Answer. Filed May 9, 1883. M. P. Doud, clerk.

87 In Circuit Court of Iowa in and for Jasper County. April Term, A. D. 1883.

W. R. MANNING *et al. vs.* J. L. MATHEWS *et al.*

STATE OF IOWA, } *ss:*
Jasper County, }

I, H. S. Winslow, being sworn, say: that I am attorney for plaintiffs, and am informed by D. G. Winchell, treasurer, that the appearance for him by A. K. Campbell and R. A. Sankey is without his authority, as appeared by paper hereto attached.

H. S. WINSLOW.

Subscribed and sworn to by H. S. Winslow, this 9th day of May, A. D. 1883.

M. P. DOUD,
Clerk Circuit Court.

Upon the above affidavit the plaintiffs move the court to compel the att'ys to show by what authority they appeare for D. G. Winchell, treas.

88 WINSLOW & WILSON,
Att'ys for Pl't'ffs.

(End.:) W. R. Manning *et al. vs.* J. L. Mathews *et al.* Filed May 9, 1883. M. P. Doud, clerk. Motion to compel att'ys to show authority for appearing for D. G. Winchell, treasurer. Winslow & Wilson.

89 In Circuit Court, Jasper County, Iowa.

W. R. MANNING *et al. v.* D. G. WINCHELL *et al.*

This cause coming on for hearing on motion of defendants to dissolve injunction this third day of this term, being the 26th day of April, 1883, it is ordered by the court that the injunction granted

herein be modified to the extent of permitting the county treasurer, Winchell, to receive all taxes offered to be paid by any tax payer, and so far as injunction applies to county treasurer, it is modified to the extent of not including any tax assessed or paid except taxes assessed against or paid in by parties to this suit.

(To which plaintiff excepts.)

Bond on appeal is fixed at $750.00, and upon consent of par-
90 ties modifications of the injunction made and to be made at this time shall stand suspended without bond for seven days after rising of this court.

WINCHELL: In the case to enjoin the collection of the R. R. tax in Newton and Lynn t'ps, Sankey file an answer for you? Is this by your authority? Did you, and do you, intend to contest the claim made by the tax payers?

WINSLOW: Ans. No. I never authorized him or any one else to appear for me. I do not intend to pay out one cent until ordered to do so by an order of some court.

WINCHELL.

91 *Motion to Dissolve the Temporary Injunction.*

In the Circuit Court of Iowa in and for Jasper County. November Term, A. D. 1883.

WM. R. MANNING *et al.*
vs.
J. L. MATHEWS, D. G. WINCHELL, *et al.*

Now come the defendants in the above-entitled cause, except the defendant, D. G. Winchell, and move the court to dissolve the temporary injunction herein, and for cause of such motion state:

1st. That the petition and amendments thereto do not state any sufficient cause for the issuance of a writ of injunction.

2nd. That the matters stated in the petition respecting the subject-matter of this action only allege irregularities, are not sufficient, if true, to authorize the interposition of a court of equity by injunction.

92 3rd. The answer and amendment thereto deny all allegations of fraud in the procurement of the signers to the petition.

4th. All matters respecting the petition and notice for the special election at which the tax complained of was noted have been adjudicated by the township trustees, and no appeal or other proceeding has been taken to review their decision, and all such matters are now *res adjudicata*, and cannot be reviewed or examined in this action.

5th. That all irregularities in the certificate of the township clerk to the county auditor have been passed upon by the board of supervisors, and said certificate adjudged sufficient, and the said special tax levied, and that no appeal, or other proceeding provided by law has been taken from the action of the board of supervisors in adju-

dicating said certificate sufficient, and in levying the tax, and that the sufficiency of said certificate cannot be reviewed
93 or examined in this action.

6th. Plaintiffs have complete remedy at law for the alleged injuries complained of.

7th. Because said temporary writ of injunction has been taken advantage of by plaintiffs, and the treasurer, Winchell, to retain all money paid in on said special tax by the tax payers of Newton township not parties to this action, and thereby working an injury to the defendant Sully, for whose use the same was paid.

8th. Because the treasurer, Winchell, in collusion with the plaintiffs, and at their instigation, refuses to recognize the modification of the injunction made by the court herein, and disregards the order of the court.

9th. said injunction seeks to restrain the township trustees from making any further certificate to the county treasurer respecting the completion of the road, and the railroad company being en-
94 titled to receive the tax, while the law requires said trustees to make such certificate when in their judgment said tax has been earned, and the court therefore upon the statement of the petition had no authority to issue a restraining order as to them.

10th. The plaintiffs having stood by and permitted said road to be built upon the faith of said tax without making any objection thereto, and kept silent when they ought to have spoken, will not be permitted to now object.

A. K. CAMPBELL &
R. A. SANKEY,
Att'ys for Def'ts herein.

(End.:) W. R. Manning *et al. v.* J. L. Mathews, D. G. Winchell, *et al.* Motion to dissolve injunction. Filed Nov. 26, 1883. M. P. Doud, clerk.

95 *Amendment to Answer.*

STATE OF IOWA, } ss:
Jasper County, }

Circuit Court. November Term, A. D. 1883.

W. R. MANNING *v.* J. L. MATHEWS *et al.*

Now come all of the defendants in the above-entitled cause, except the defendant, D. G. Winchell, treasurer, and, leave of court first being obtained, file this their amendment to the original answer herein, and say:

1st. That by oversight in drawing said original answer the defendant, J. G. Winchell, was apparently included therein, but that no appearance was intended to be made for said Winchell, he having declined to appear, and defendants desire to correct said answer so as to show that no appearance has been made for said Winchell.

Defendants further say that said Winchell is only a nom-
96 inal party to this action, and made defendant by virtue of his

position as treasurer, and not because he has any interest in the subject-matter of this action.

That he is in collusion with plaintiff for the purpose of defeating the collection of the tax in this action sought to be abated and cancelled.

That at the last term of this court temporary injunction issued herein was by the court modified so as to permit any of the plaintiffs who desired to pay the tax in controversy herein to the said treasurer to do so, and was entirely dissolved as to all parties not plaintiffs herein. That prior to the commencement of this action, and since the modification of said temporary injunction, a considerable number of the tax payers of Newton township not parties to this suit have paid the said railroad tax to the said D. G.
97 Winchell as treasurer; but although the trustees of said Newton township, prior to the commencement of this action, had certified to said treasurer that the defendant railroad company had earned and was entitled to said tax, the said Winchell wilfully refuses to pay any of said money to said railroad company or to Alfred Sully, the assignee of said tax, but retains the same for his own use and purpose. Wherefore, and because of the foregoing, these defendants say that said Winchell is in collusion with the plaintiffs, and that any action of his in this cause ought not to prejudice the right of said Sully to said tax.

That the defendants, J. L. Mathews, W. B. Ritter, and J. N. Edge, are the trustees of Newton township and are only nominal parties to this action, having no interest in the result of the suit.
98 And that said trustees, prior to the commencement of this action, believing the said railroad company had honestly and faithfully complied with the conditions contained in the notice for the special election at which the tax was voted, caused a certificate of such facts to be made by the township clerk to the treasurer, to enable said railroad company or the assignee of said tax to receive the same from the treasurer, which said certificate was signed by J. L. Mathews and W. B. Ritter, two of said trustees, and would have been by the remaining one had he been present at the time.

2d. Defendants, further answering, say, that they repeat and reaffirm all of the denials, statements, and allegations of the original answer herein; and further state that on August 18th, A. D. 1882, the railroad from New Sharon to Newton, Iowa, was com-
99 pleted to a depot within the corporate limits of said city of Newton and within one-half mile of the public square of said city, and that on the 18th day of August, A. D. 1882, regular daily trains commenced running over said road between said points of New Sharon and Newton, and have been so running ever since that date, and at all times since said road was completed, to wit, August, A. D. 1882, said road has furnished accommodations for all passenger and freight traffic offered to the same for any and all stations on its line, and since July 1st, 1883, it has been a daily mail route.

That in all respects said railroad company have fully complied with the terms and conditions of the notice on which said special

election was held, and within the time stated and limited in said notice.

3d. Defendants, further answering, say they deny specifi-
100 cally each and all of the allegations contained in both the amendments to the original petition.

Deny that the additional parties made plaintiffs herein have such a common or general interest in the subject-matter of this action as to entitle them, or either of them, to be joined as parties plaintiff.

Deny that the notice of election "was and is fatally defective," because of the reasons set out in second paragraph of the second amendment to the petition, or that said notice is at all defective.

Deny that the certificate of the township clerk "was also fatally defective," for the reasons set out in the third paragraph of said second amendment.

Deny that there was or is anything in the articles of incorporation of the New Sharon Coal Valley and Eastern Railroad Company of the tenor and effect of the allegations contained in the fourth paragraph of the second amendment to the petition.

Admit that the railroad line from Newton was sold to the
101 Central Iowa Railway Company, but allege that the said road was built and completed by the def't railroad company, as provided by the terms of sale, and that the same was not turned over and possession of said road from Newton to New Sharon taken by the Central Iowa until November 1st, 1882, long after the same was completed and in operation.

Defendants further say that all matters respecting the sufficiency and correctness of the notice for the election were adjudicated by the township trustees, and no appeal or other proceeding provided by law was ever taken from their decision, and that said adjudication is, therefore, final, and that all matters respecting the petition and notice for the election in the petition and amendment in this action set out are *res adjudicata.*

Defendants further say that all matters respecting the form
102 and sufficiency of the certificate of the township clerk to the county auditor, respecting the voting of said special tax in Newton township, have been passed upon and adjudicated by the board of supervisors of Jasper county, and the tax by them levied, and that no appeal or other proceeding provided by law was ever taken from the decision and judgment of said board of supervisors, and the defendants therefore say that the matters now in this action pleaded and alleged to be defects in said certificate are *res adjudicata*, and cannot be reviewed in this action.

4th. Defendants further say in answer to the petition and amendments thereto herein that all of the defects alleged in the said petition and notice for the special election, all of the allegations of fraud in relation thereto, were, at the time of said election and at the time said certificate was made and tax levied by the board of super-
103 visors, as fully known to the plaintiffs as at the commencement of this action. That all of the plaintiffs had actual knowledge that the said railroad was being constructed from New Sharon to Newton on the faith of the tax of Lynn Grove and New-

ton townships, and in the expectation that said tax would be paid when the said road was constructed between the said points.

That they all stood by and permitted said road to be built, some of them actively aiding in doing so, and the remainder encouraging by their silence and belief that said tax would be paid when the said road was built. That all of said plaintiffs knew that the money to build said road was being furnished on the faith of said tax; that the New Sharon Coal Valley and Eastern Railroad Company at the time said tax was voted did not have the means to build said
104 line of road, and that said tax when voted was to be used by said company as an inducement to get some other corporations or persons to furnish the money to build the same and take said tax as part payment thereof.

That knowing all of the foregoing facts, each and all of the plaintiffs refuse to make known any objection to the payment of said tax until the defendant Sully and his copartners had expended over a quarter of million of dollars in building said line of road from New Sharon to Newton, and putting up depot buildings, switches, side tracks, etc., and not until long after said road was completed, and the trains running thereon, and said plaintiffs had secured all the benefits arising from having said road built to the town of Newton, and then, for the purpose of defrauding the defendant Sully out of said tax, was this suit commenced.

Wherefore defendants say that plaintiffs are now barred
105 and estopped from having or maintaining this action; that there is no equity in the bill, and it should be dismissed.

5th. Defendant Alfred Sully, further answering, —— that he is the owner of the tax in this action sought to be declared uncollectable and null and void; that the amount of said tax is $30,000, all of which is involved in this action; that he became the owner of said tax by virtue of an assignment thereof to him, a copy of which said assignment of the tax of Newton township is hereto attached, marked Exhibit "A," and made a part hereof; that said assignment was made to said Sully for the purpose of reimbursing him in part for money advanced in the construction of the road to the town of Newton; that the money so advanced by this defendant for the construction of said road was done on the faith of the tax of said
106 Newton township, and that of Lynn Grove, and Prairie townships, and had it not been for said taxes this defendant would not have made the advances to build the same.

That defendant, at the time of furnishing the money to build said road, and at the time of the construction of the same, and at the time said tax was assigned to defendant, had no knowledge of any of the objections now alleged to exist to the collection and payment of the same.

That prior to furnishing said money, and prior to receiving said assignment of said tax, this def't caused inquiry to be made, and an examination of the records of the New Sharon Coal Valley and Eastern Railroad Company as to what had been done or promised by said company respecting said tax, and that said examination — in not finding anything relating thereto prejudicial to the rights of said company,

or of any promises having been made by said company other
107 than are set out in the petition and notice for the election.
That said tax of Newton township, at the time the money was desired to build the road by the railroad company from New Sharon to Newton, was held out to the defendant as a great inducement to extend said road from Lynnville to Newton, and that it was on the faith of said tax that this defendant and his copartners furnished the money to construct the same, relying upon said tax to partially reimburse them for the money so advanced.

Wherefore and by reason of the foregoing defendants pray that this action be dismissed upon its merits; that the temporary injunction herein issued be dissolved; and that defendants have such relief as in equity and in good conscience they may justly be entitled to, said action having no equity, and being brought without just cause, and for the costs of this action.

108 A. K. CAMPBELL &
R. A. SANKEY,
For said Def'ts.

STATE OF IOWA, }
Jasper County, } *ss:*

I, S. C. Cook, being sworn, say that I have read the original answer in this cause and this amendment thereto, and know the contents thereof. That ever since the building of the line of roads from New Sharon to Newton was commenced I have been an officer of the railroad company, assisting in building the road, and had charge of the same from the time it was completed until the possession was transferred to the Central Iowa Railway Company. That during all of said time I was a resident of Newton township, and never heard the validity of the tax now in dispute questioned or any question made about the payment of the same by any of the plaintiffs herein
until immediately prior to the commencement of this action
109 and after said tax had become due and payable, and that the several statements, denials, and allegations in said amendment to the answer are true, as I verily believe.

S. C. COOK.

Subscribed and sworn to before me and in my presence by S. C. Cook, this 26th day of November, A. D. 1883.

[SEAL.] E. C. OGG,
Notary Public.

110 "EXHIBIT A."

Whereas the New Sharon Coal Valley and Eastern Railroad Company, for the purpose of securing the construction of its roadway, did, on the 8th day of June, 1881, make a contract with H. F. Stone, whereby said railroad company contracted with said Stone for the building of this roadway, and agreed, among other things, to pay said Stone, in cash, work, or material, an amount equal to two per cent. tax on the assessed valuation of property of the several townships through which said road was built; and whereas said Stone has complied with his part of said contract, and said railroad com-

pany, nor the Chicago, Burlington & Pacific Railroad Company, successor to the former railroad company, have paid any portion of said sum agreed to be paid; and whereas said H. F. Stone has
requested the taxes voted in aid of the construction of the
111 New Sharon Coal Valley and Eastern Railroad Company and
the Chicago, Burlington & Pacific railroad in the several townships along the line, be assigned to Alfred Sully, in New York City, for money advanced by Mr. Sully to enable said Stone to fulfil this contract; and whereas said Stone has agreed, if such assignment be made, to accept the same in full payment of the two per cent. sum that was agreed to be paid him by the railroad company:

Now, therefore, in consideration of the foregoing, the Chicago, Burlington & Pacific Railroad Company hereby sell, assign, and transfer all of its right, title, and interest in and to the several taxes voted in aid of the construction of the New Sharon Coal Valley and Eastern railroad and the Chicago, Burlington & Pacific railroad, in the townships of Newton and Lynn Grove, in Jasper county, Iowa.

* * * * * * to Alfred Sully, of the city of New York, in
full payment of the sum agreed to be paid H. F. Stone, in the
112 contract with him of June 8th, A. D. 1881, and we hereby authorize said Sully to collect and receipt the said taxes as fully as could be done by the railroad company.

In witness whereof, we have hereunto set our hands and affixed the official seal of said railroad company, this 1st of February, A. D. 1883.

[SEAL.] CHICAGO, BURLINGTON & PACIFIC RAILROAD COMPANY,
By S. C. COOK, *President.*

Attest:
E. C. OGG, *Secretary.*

Assignment duly acknowledged before M. P. Doud, clerk of district court of Jasper county, Iowa.

(Endorsed:) W. R. Manning *et al. vs.* D. G. Winchell *et al.* Amendment to answer. Filed Nov. 26, 1883. M. P. Doud, clerk.

113 STATE OF IOWA, } *ss:*
Jasper County, }

I, S. C. Cook, being sworn, say that I have known J. F. Allen for nine years last past; for the last four years he has resided in Newton township, Jasper county, Iowa; that during the summer of 1883 and up to May 30th, 1883, the J. F. Allen was at Newton and vicinity within reach of a subpœna; that the said J. F. Allen reappeared in Newton about the time his deposition was filed in the office of the clerk of this court in the case of Wm. R. Manning *vs.* D. G. Winchell *et al.*, taken in New Mexico, and has remained here in the said Newton township and vicinity ever since.

S. C. COOK.

Subscribed and sworn to before me and in my presence by S. C. Cook, this 27th day of November, 1883.

[SEAL.] E. C. OGG,
Notary Public in and for Jasper County, Iowa.

114 STATE OF IOWA, } ss:
Jasper County, }

I, R. A. Sankey, being sworn, say that I am acquainted with Geo. C. Morgan, the notary public who took the depositions of Pierce Ratliff, Geo. Carson, and C. H. Kramer filed in this cause on the 8th day of Nov., A. D. 1883; that I personally know that said Geo. C. Morgan, at the time of taking said deposition, was a party and also an attorney in a similar suit against the defendant railroad company and Alfred Sully to defeat the collection of the tax of Prairie township, Mahaska county, Iowa, which suit is pending in the circuit court of Mahaska county, State of Iowa, and that said Morgan is an active party in procuring the evidence and preparing said cause for trial, and has and is manifesting a great interest in said suit, not only as a party plaintiff therein, but also as one
115 of the attorneys, and was so acting as plaintiff and attorney at the time of taking the depositions in this cause.

R. A. SANKEY.

Subscribed and sworn to before me and in my presence by R. A. Sankey, this 27th day of November, A. D. 1883.

[SEAL.] JOHN C. WILSON,
Notary Public.

116 *Motion to Suppress Depositions.*

In Circuit Court, Jasper County, Iowa.

W. R. MANNING *v.* ALFRED SULLY, D. G. WINCHELL, *et al.*

Now comes defendant and moves the court to suppress and exclude from the evidence herein—

1st. The deposition of L. B. Westbrook, filed Oct. 29th, 1883, because the same is not rebutting, and is wholly immaterial and irrelevant, gives defendant no opportunity to meet the same by explanatory or rebutting evidence.

2d. To exclude the deposition of J. F. Allen, filed September 17, 1883, because he is a resident of the State of Iowa, and county of Jasper, and township of Newton, and has been in the town-
117 ship most of the time since his deposition was taken, and previously, and defendants are entitle- of right to a cross-examination of the witness, face to face, in his personal presence, and because plaintiff has no right to his testimony taken in a temporary absence, to the great disadvantage of defendants, see affidavit hereto attached, and because said deposition of said J. F. Allen was not filed within the time required by this court. Also to suppress

depositions of Pierce Ratliff, Geo. Carson, and C. H. Kramer, filed herein, because not rebutting, and for reasons set out in affidavit of R. A. Sankey hereto attached.

R. A. SANKEY,
A. K. CAMPBELL,
Att'ys for Def't.

118 (End.:) W. R. Manning *vs.* D. G. Winchell *et al.* Motion to suppress depositions. Filed Nov. 27, 1883. M. P. Doud, clerk.

119 *Replication.*

STATE OF IOWA, *Jasper County,* } ss:

Circuit Court, November Term, A. D. 1883.

W. R. MANNING *et al. v.* D. G. WINCHELL, Treas., etc., *et al.*

And now come the plaintiffs, and for a replication to the answer of defendants, as amended, they say that they deny each and every allegation therein contained, which is inconsistent with or contradictory of the allegations contained in their petition. They deny that the road was built and completed as alleged. They deny that plaintiffs are estopped as alleged. They deny that defendant Winchell, treasurer, or any one else, is in collusion with them for the purpose alleged or any other purpose.

Wherefore plaintiffs pray as in their petition.

120 H. S. WINSLOW,
Att'y for Pl'ffs.

STATE OF IOWA, *Jasper County,* } ss:

W. R. Manning, being sworn, says: That he is one of the plaintiffs in this cause, and that the matters and things stated in this replication is true, as I verily believe.

W. R. MANNING.

Subscribed and sworn to by W. R. Manning, this 28th day of Nov., A. D. 1883.

[SEAL.] A. J. CRAVEN,
Notary Public.

(Endorsed:) W. R. Manning *et al. v.* J. L. Mathews *et al.* Circuit court. Replication. Filed Nov. 28, 1883. M. P. Doud, clerk. H. S. Winslow.

121 *Bill of Exceptions.*

STATE OF IOWA, *Jasper County,* } ss:

W. R. MANNING *et al. vs.* J. L. MATHEWS *et al.*

Be it remembered that on the 28 day of November, A. D. 1883, this cause coming on for hearing on the application of the defend-

ant, Alfred Sully, to remove said cause for trial to the circuit court of the United States for the district of Iowa, and pending the decision of the court on said application for removal the plaintiffs move to dismiss said cause as to the defendant, Alfred Sully; to which motion the defendants at the time objected, and which motion was by the court sustained and defendants excepted thereto.

And on the 29 day of November, A. D. 1883, the court
122 overruled the motion to transfer to the United States circuit court; to which ruling of the court the defendants at the time duly excepted.

And now on this 30 day of November, A. D. 1883, the plaintiffs move to strike out the record dismissing said cause as to the defendant Sully, and to reinstate the cause as to him; which motion was by the court sustained and said entry stricken out; to which ruling of the court the defendants (except D. G. Winchell) at the time duly excepts.

And the foregoing not all being of record, this bill of exceptions is now, in open court, duly signed, to the end that all of said matters may fully appear of record herein.

W. R. LEWIS, *Judge.*

(End.:) W. R. Manning *et al. vs.* J. R. Mathews *et al.* Bill of exceptions. Filed Nov. 30, 1883. M. P. Doud, clerk.

123 *Petition for Removal to the Circuit Court of the United States, District of Iowa.*

In the Circuit Court of Iowa in and for Jasper County. November Term, A. D. 1883.

W. R. MANNING *et al.*

vs.

J. L. MATHEWS, W. B. RITTER, & J. N. EDGE, Trustees, ALFRED SULLY, *et al.*

To said court:

Your petitioner, Alfred Sully, respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in this suit is between citizens of different States.

That your petitioner was at the time of the commencement of this suit, and still is, a resident and citizen of the State of New York.
124 That each and all of the plaintiffs in this action were at the commencement of this suit, and still are, citizens and residents of the State of Iowa.

That the defendants J. L. Mathews, W. B. Ritter, & J. N. Edge, trustees of Newton township, the defendant D. G. Winchell, treasurer of Jasper county, and the defendant The New Sharon, Coal Valley

and Eastern Railroad Company, now the Chicago, Burlington & Pacific Railroad Company, were each at the commencement of this suit, and still are, citizens and residents of the State of Iowa.

Your petitioner further represents to this honorable court that he is the owner of the tax in controversy in this action, and that the other defendants are only nominal parties, who have no interest in the said tax, which is the subject-matter of this suit.

That there can be a final determination of the controversy
125 in this suit, so far as concerns this defendant, without the presence of either or any of the other defendants as parties to this cause.

That this action is brought for the purpose of restraining and enjoining this defendant from proceeding to collect the tax which is the subject-matter of this suit, and to have said tax declared illegal, null, and void, and to have the same cancelled and its collection perpetually enjoined.

Your petitioner further says that this suit has not been tried, that it is an equitable action, and this is the first term at which said suit could be tried, and that it has not yet been reached for trial.

That it is now pending for trial in the circuit court of the State of Iowa for said county of Jasper.

That your petitioner desires to remove this suit into the cir-
126 cuit court of the United States for the district of Iowa, in pursuance of the act of Congress in that behalf provided, to wit, the Revised Statutes of the United States.

And your petitioner offers herewith a bond, with good and sufficient surety, for his entering in said circuit court of the United States on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold this suit was wrongfully *earned* or improperly removed thereto. And he prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said court of the United States in and for the district of Iowa; and he will ever pray.

A. K. CAMPBELL & R. A. SANKEY,
Att'ys for Petitioner.

127 STATE OF IOWA, } ss:
Jasper County, }

I, R. A. Sankey, being sworn, do say that I am attorney for Alfred Sully, the petitioner in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true, as I verily believe.

R. A. SANKEY.

Subscribed by the said R. A. Sankey in my presence, and by him sworn to before me, this 27th day of November, A. D. 1883.

[SEAL.] JNO. C. WILSON,
Notary Public.

(Endorsed:) W. R. Manning *et al. vs.* J. L. Mathews *et al.* Petition for removal to U. S. court. Filed Nov. 27, 1883. M. P. Doud, clerk.

128 Know all men by these presents, that we, Alfred Sully, as principal, and S. C. Cook and James Wilson, as surety, are hereby held and firmly bound unto William R. Manning *et al.* in the penal sum of five hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents. The condition of this obligation is such, that if the said Alfred Sully shall enter and file, or cause to be entered and filed, in the next circuit court of the United States in and for the district of Iowa on the first day of its session, copies of all process, pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the circuit court of the county of Jasper and
129 State of Iowa, in which William R. Manning *et al.* are plaintiffs and Alfred Sully and others are defendants; and shall do such other appropriate acts as by the act of Congress in that behalf are required to be done upon the removal of such suit from said State court into the said United States court, then this obligation to be void; otherwise, of force.

ALFRED SULLY,
By A. K. CAMPBELL &
R. A. SANKEY,
His Att'ys.
S. C. COOK,
JAMES WILSON,
Sureties.

Dated November 27th, 1883.

STATE OF IOWA, }
Jasper County, } *ss:*

The undersigned, surety for Alfred Sully, whose names are signed to the foregoing, being duly sworn, do severally depose and say, as follows:

I, S. C. Cook, do say that I am worth the sum of one thousand dollars, exclusive of property exempt from execution, and
130 that I am a resident of and a freeholder in the State of Iowa.

I, James Wilson, do say that I am worth the sum of one thousand dollars, exclusive of property exempt from execution, and that I am a resident of and a freeholder in the State of Iowa.

S. C. COOK.
JAMES WILSON.

Subscribed and sworn to by S. C. Cook and James Wilson before me and in my presence, this 27th day of Nov., 1883.

[SEAL.] J. M. CLEMENTS,
Notary Public in and for Jasper County, Iowa.

The above bond and security approved by me this 27th day of Nov., 1883.

M. P. DOUD,
Clerk of the Circuit Court.

131 STATE OF IOWA, } ss:
Jasper County, }

Be it remembered that on this 25th day of April, 1883, the same being the 2nd day of the April term of the circuit court of Iowa in and for said county, Hon. W. R. Lewis, judge of the circuit court in and for the sixth judicial circuit, sole judge presiding, the following proceedings were had among others, to wit:

WM. R. MANNING } 2452.
vs.
J. L. MATHEWS *et al.* }

Pending motion requiring pl't'ff to divide & number, plaintiff gives leave to file substituted and amended petition by 2nd Monday morning.

Def't excepts.

132 And afterwards, on the 3d day of said term, the same being the 26th day of April, 1883, the following proceedings were had and entered of record in said cause, to wit:

WM. R. MANNING } 2452.
vs.
J. L. MATHEWS *et al.* }

Pending motion to dissolve injunction and motion to strike [out] parts of petition, and motion for more specific statement, plaintiff gives leave to amend petition and make additional parties plaintiff. Injunction modified to the extent of permitting the county treasurer, D. G. Winchell, to receive all taxes offered to be paid by any tax payer, and, so far as the injunction applies to the county treasurer, it is modified to the extent of not including any tax assessed or paid, except taxes assessed against or paid in, by parties to this suit; to which pl't'ff excepts.

133 Bond on appeal is fixed at $750.00, and upon consent of parties, the modifications of the injunction, made and to be made at this term, shall stand superseaded, without bond, for 7 days after the rising of this court.

As to the other questions on the motion, no ruling, and same taken under advisement.

This cause coming on for hearing, on motion of defendants to dissolve injunction, this 3d day of this term, the same being the 26th day of April, 1883, it is ordered by the court that the injunction granted herein be modified to the extent of permitting the county treasurer, Winchell, to receive all taxes offered to be paid by any tax payers, and, so far as injunction applies to county treasurer, it is modified to the extent of not including any tax assessed
134 against or paid in by parties to this suit; to which pl't'ff excepts.

Bond on appeal is fixed at $750.00, and upon consent of parties modification of the injunction, made and to be made at this term, shall stand superseaded, without bond, for seven days after rising of court.

And afterwards, on the 9th day of this term of court, the same being the 3d day of May, 1883, the following proceedings were had and entered of record in this cause, to wit:

WM. R. MANNING
vs.
J. L. MATHEWS *et al.* } 2425.

Except as heretofore modified, motion to dissolve is overruled, and def't excepts.

Motion to strike is overruled, and def't excepts.

135 And now, on this 9th day of this term of court, the same being the 3d day of May, A. D. 1883, the pl't'ff appearing by Winslow & Wilson, & the def'ts by R. A. Sankey & A. K. Campbell, and the def'ts having filed a motion to dissolve the injunction, the same is overruled, except as heretofore modified, and def't excepts; and the same day a motion to strike having been filed by def't, the same was overruled, and def't excepts.

And afterwards, to wit, on the 14th day of this term of court, the same being the 9th day of May, 1883, the following proceeding was had and entered of record in this cause, to wit:

WM. R. MANNING
vs.
J. L. MATHEWS *et al.* } 2452.

136 Plaintiff's motion for order requiring def'ts' att'ys to show authority to appear for def't Winchell sustained, and it appearing to the court that they have no authority to make such appearance, answer, so far as it appears to be for Winchell, shall be disregarded.

Set down for trial on depositions; pl't'ff to file by Sept. 1st, 1883; def't by Oct. 15th, 1883. Rebuttal thereafter by first day of next term of this court.

Continued.

And afterwards, on the 1st day of the Nov. term of said court, Hon. W. R. Lewis, sole judge, presiding, the same being the 26th day of Nov., 1883, among others the following proceedings were had and entered of record, to wit:

WM. R. MANNING
vs.
J. L. MATHEWS *et al.* } 2452.

Defendants given leave to amend answer.

137 And afterwards, on the 3d day of the same term of court, the same being the 28th day of Nov., 1883, the following proceedings were had and entered of record, to wit:

WM. R. MANNING
vs.
J. L. MATHEWS *et al.* } 2452.

Application for removal to U. S. circuit court dismissed, and the defendant, A. Sully, excepts.

And afterwards, on the 5th day of the same term of court, the same being the 30th day of Nov., 1883, the following proceedings were had and entered of record in said cause, to wit:

WM. R. MANNING
vs.
J. L. MATHEWS *et al.* } 2452.

138 Motion filed Nov. 27, 1883, to suppress depositions submitted to be decided with the main case.

Trial to court on depositions. Reporter taking schedule of testimony, and upon agreement of parties in open court, to be taken under advisement, argued in writing, decided, and decree entered in vacation. Plaintiff to present argument by adjournment of court; def'ts to present theirs by 30 days after receipt of pl't'ff's argument.

And now on this 5th day of this term of court, the same being the 30th day of Nov., 1883, came this cause on for hearing, H. S. Winslow appearing for the pl't'ff, and R. A. Sankey and A. K. Campbell for def'ts.

It being tried to the court, the motion to suppress depositions filed Nov. 27, 1883, submitted to be decided in main case and entire cause submitted to be decided and decree entered in vacation, to be argued in writing. Plaintiff to present arguments by adjournment of court; def'ts to present theirs by 30 days after receipt of pl't'ff's argument.

139

STATE OF IOWA,
Jasper County, } *ss:*

I, M. P. Doud, clerk of the circuit court of Iowa in and for Jasper county, do hereby certify that the within and foregoing is a true, perfect, and complete transcript of the journal entries, papers filed, and depositions taken and filed, and of all the records in said cause of Wm. R. Manning *et al. vs.* J. L. Mathews *et al.*, as full, true, and complete as the original that remains on file and of record in this office.

140 Witness my hand and the seal of said circuit court, this 12th day of May, A. D. 1884.

[SEAL.] (S'g'd) M. P. DOUD,
Clerk of Circuit Court.

(Endorsed:) W. R. Manning *vs.* J. L. Mathews *et al.* 2040. Eq. Transcript from circuit court, Jasper Co. Filed May 13, 1884. Ed. R. Mason, clerk.

141 And on the 13th day of May, 1884, the defendant, Alfred Sully, by R. A. Sankey, his solicitor, filed in said cause a *præcipe* for appearance, in the words and figures following, to wit:

142 *Præcipe for Appearance.*

United States Circuit Court, Southern District of Iowa.

WM. R. MANNING *et al.*
vs.
J. L. MATHEWS & ALFRED SULLY *et al.* } No. —.

The clerk of said court will please enter my appearance for the defendant, Alfred Sully, and Winslow & Varnum for the plaintiffs, in the above cause, and docket the same on chancery docket.

R. A. SANKEY,
Attorney for Alfred Sully.

The names of all parties for whom appearance is entered must be written in full.

(Endorsed:) U. S. circuit court, southern district of Iowa. No. —. W. R. Manning *et al. vs.* J. L. Mathews *et al.* *Præcipe* for appearance of defendant. R. A. Sankey, attorney. Filed May 13, 1884. Ed. R. Mason, clerk.

143 And on the 13th day of May, 1884, a motion to remand was filed in said cause, in the words and figures following, to wit:

144 *Motion to Remand Cause to the Circuit Court of Jasper Co., Iowa.*

In the United States Circuit Court in and for the Southern Dist. of Iowa.

WILLIAM R. MANNING *et al. vs.* J. L. MATHEWS *et al.*

And come the plaintiffs, and move the court to remand this cause to the circuit court of Jasper county, Iowa, because—

I. This court has no jurisdiction of subject-matter in controversy, or the parties thereto.

II. The claim of the defendant, A. Sully, is based upon and in favor of said judgment, as an assignee of a contract—not a promissory note, negotiable by the law merchant, or a bill of ex-
145 change—and no suit could have been prosecuted in this court if no assignment had been made of the same.

III. The petition for the removal to this court shows that the assignor of defendant, Sully, is a resident and citizen of the State of Iowa, and that the matter assigned is not negotiable by the law merchant or a bill of exchange.

IV. There is but a single issue involved in the cause, and that is the validity and collectibility of the taxes voted, and the treasurer of Jasper county, Iowa, is a necessary and indispensable party defendant to the proceeding.

V. Under the alleged assignment the defendant, Sully, has and can have nothing to do with the collection of the tax voted.

VI. Defendant, Sully, has no right to anything under his assignment but to receive the taxes when collected.

146 VII. The material relief prayed can be granted without defendant, Sully, being a party to the action.

VIII. The controversy is not wholly between citizens of different States.

IX. There is no proof in the record or fact found that any statement contained in the petition for the removal is true.

X. There is nothing showing that a bond was offered and filed with good and sufficient surety thereon.

XI. The defendant, Sully, stands in the shoes of his assignor, and if it could not remove the cause he cannot, and it appears from the record that it could not.

XII. While the aggregate of the tax voted may exceed the sum of five hundred dollars, yet there is nothing showing that

147 the individual tax of either plaintiff amounts to that sum, and, on the contrary, plaintiffs aver that the tax voted and levied against the plaintiffs in no case amounts to the sum of four hundred dollars, as against any one plaintiff, which fact the plaintiffs offer to show by competent proof upon the hearing of this motion.

XIII. The amount in controversy as to each plaintiff does exceed the sum of five hundred dollars, as shown by affidavit hereto attached.

XIV. There is no showing or allegation that the other defendants named with defendant, Sully, are not necessary and indispensable party defendants.

XV. The defendant has waived his right to have the cause removed by agreeing that the cause might be decided and decree entered in vacation.

148 XVI. The petition for removal was filed after the cause had been tried upon demurrer and comes too late.

(S'g'd) WINSLOW & VARNUM,
Att'ys for Pl'ff's.

(Endorsed:) Wm. R. Manning *et al. vs.* J. L. Mathews *et al.* U. S. cir. court. Motion to remand cause to the cir. court, Jasper Co., Iowa. Winslow & Varnum.

149 STATE OF IOWA, }
Jasper County, } *ss:*

S. H. Galusha, being duly sworn, says: He is the treasurer of Jasper county, Iowa, and the successor in office of D. G. Winchell.

That as such treasurer he has in his possession and under his custody and control the tax books of said Jasper Co., Iowa, and which books contain the tax levy of taxes voted in aid of the New Sharon Coal Valley & Eastern Railroad Company, in Newton township, Jasper county, and the only levy made in aid of said company in said township.

That neither of the plaintiffs in the suit of William R. Manning *et al.* against J. L. Matthews *et al.* are assessed in the sum of five hundred dollars under said levy, made by virtue of the vote
150 had in said township when the question was submitted whether aid should be voted to said company, and the tax of each of the plaintiffs in favor of said company is less than five hundred dollars.

(S'g'd) S. H. GALUSHA,
Treas. Jasper Co.

Subscribed and sworn to by S. H. Galusha before me, and in my presence, this 12th day of May, A. D. 1884.

[SEAL.] (S'g'd) H. S. WINSLOW,
Notary Public.

(Endorsed:) Wm. R. Manning *et al. vs.* J. L. Mathews *et al.* U. S. cir. court. Motion to remand cause to cir. court Jasper Co., Iowa. Filed May 13, 1884. Ed. R. Mason, clerk. Winslow & Varnum.

151 And on the 16th day of May, 1884, in the record of the proceedings of said court is an entry in said cause, in the words and figures following, to wit:

152 United States Circuit Court, Central Division, Southern District of Iowa. May Term, 1884.

MONDAY, *May* 16, 1884.

WILLIAM R. MANNING
vs.
J. L. MATHEWS, ALFRED SULLY, *et al.* } No. 2040. Eq.

This cause came on this day for hearing upon complainant's motion to remand this cause complainant appears by Winslow & Varnum, and the defendant, Alfred Sully, by R. A. Sankey, and after argument of counsel thereon, the said motion to remand is submitted to the court; and the court being now fully advised in the premises, it is ordered that the said motion to remand be, and the same is hereby, sustained. It is, therefore, ordered and decreed that this cause be and the same is hereby remanded to the circuit court of Iowa in and for Jasper county, at the costs of Alfred Sully. It is further ordered, adjudged, and decreed, that said defendant, Alfred Sully, pay the costs herein, taxed at $——, and the execution issue therefor. To which ruling the defendant, Alfred Sully, at the time duly excepted.

153 And on the 19th day of May, 1884, in the record of the proceedings in said court is an entry in said cause, in the words and figures following, to wit:

154 United States Circuit Court, Central Division, Southern District of Iowa. May Term, 1884.

MONDAY, *May 19th*, 1884.

WILLIAM R. MANNING
vs.
J. L. MATHEWS, ALFRED SULLY, *et al.* } 2040. Eq.

This cause coming on this day for hearing, the defendant, Alfred Sully, prays an appeal to the Supreme Court of the United States in open court, which is allowed, and the appeal bond herein is fixed at the sum of one thousand dollars, with sureties, to be approved by one of the judges of this court.

155 And on the 21st day of May, 1884, an appeal bond was filed in said cause, in the words and figures following, to wit:

156 Circuit Court of the United States, Southern District of Iowa, Central Division.

WILLIAM R. MANNING
vs.
J. L. MATHEWS, W. B. RITTER, J. N. EDGE, Trustees, &c., & A. SULLY, *et al.* } 2040 Eq.

Know all men by these presents, that we, Alfred Sully, as principal, and S. C. Cook and Samuel Merrill, as sureties, are held and firmly bound unto William R. Manning in the sum of one thousand dollars, to be paid to the said William R. Manning, his heirs, executors, or administrators.

To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our
157 heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this 21st day of May, 1884.

Whereas the above-named Alfred Sully hath prayed an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States, southern district Iowa, central division:

Now, therefore, the condition of this obligation is such, that if the above-named Alfred Sully shall prosecute his said appeal to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise, to remain in full force and virtue.

(S'g'd) ALFRED SULLY.
158 By R. A. SANKEY,
His Att'y.
S. C. COOK.
SAM'L MERRILL.

Sealed and delivered in presence of ——.

UNITED STATES OF AMERICA, } ss:
District of Iowa, }

Samuel Merrill and S. C. Cook, being duly sworn, depose and say, and each for himself saith: That he is worth the sum of two thousand ($2,000.00) dollars over and above all his just debts and liabilities.

(Signed) S. C. COOK,
SAM'L MERRILL.

Sworn to before me this 21st day of May, 1884, by S. C. Cook.
[SEAL.] (S'g'd) JOHN C. WILSON,
Notary Public in and for Jasper County, Iowa.

159 Subscribed and sworn to before me, by said Sam'l Merrill, this 21 day of May, 1884.
[SEAL.] (S'g'd) R. H. PARRY,
Notary Public, Polk Co., Iowa.

I approve the above bond and the sufficiency of the sureties thereto. May 21, 1884.
(S'g'd) J. M. LOVE, *Judge.*

(Endorsed:) 2040. Eq. C. C't U. S., Io'a. William R. Manning *vs.* J. L. Mathews, W. B. Ritter, J. N. Edge, trustees, &c., & A. Sully. Appeal bond. Filed May 21, 1884. Ed. R. Mason, clerk.

160 And on the 29th day of September, 1884, an original citation was filed in said cause, in the words and figures following, to wit:

161 The United States of America to William R. Manning, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the United States circuit court, southern district of Iowa, central division, wherein Alfred Sully is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James M. Love, judge of the circuit court U. S., southern dist. Iowa, this 21st day of May, in the year of our Lord one thousand eight hundred and eighty-four.

J. M. LOVE, *Judge.*

162 On this 26th day of June, in the year of our Lord one thousand eight hundred and eighty-four, personally appeared James T. McMurray before me, the subscriber, and makes oath that he delivered a true copy of the within citation to William R. Manning, and served the said citation on him by reading the same to him in Newton, Jasper county, Iowa, on the 25th day of June, 1884.

JAMES T. McMURRAY.

Sworn to and subscribed before me, by James T. McMurray, June 26th, 1884.

[SEAL.] S. C. COOK,
Notary Public in and for Jasper County, Iowa.

Fees for service, 70 cents, p'd by def't Sully.

[Endorsed]: Filed Sep. 29, 1884. Ed. R. Mason, clerk.

163 In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

I, E. R. Mason, clerk of the said court for said district, do hereby certify that the foregoing transcript contains full, true, and complete copies of all the pleadings, proceedings, and record entries in a certain cause adjudicated in said court, wherein William R. Manning was complainant and J. L. Matthews *et al.* were defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office. I further certify that the original citation is hereto attached, and herewith returned with return of service endorsed thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at my office, in Des Moines, in said district, this 9th day of October, A. D. 1884.

[SEAL.] E. R. MASON,
Clerk U. S. C. C., Southern District of Iowa.

Endorsed on cover: S. Iowa C. C. U. S. No. 1116. Alfred Sully, appellant, *vs.* William R. Manning. Filed 18th October, 1884.

113-293

Supreme Court of the United States.

No. 1116.

ALFRED SULLY, APPELLANT,

vs.

WILLIAM R. MAINNING ET AL., APPELLEES.

Come now the appellees, William R. Mainning *et al.*, by their attorneys, H. S. Winslow, L. C. Blanchard, and Geo. C. Morgan, and respectfully show to this Honorable Court that said cause is a removal cause under the act of March 3d, 1875, providing for the removal of causes from the State to the Federal courts, and comes to this Honorable Court on appeal from the remanding order of the honorable circuit court of the United States for the southern district of Iowa; wherefore said appellees by their counsel aforesaid would respectfully move this Honorable Court for the advancement of said cause, under the provisions of Rule 32 of this Honorable Court.

H. S. WINSLOW,
L. C. BLANCHARD,
GEO. C. MORGAN,
Att'ys for Appellees.